STATE OF MICHIGAN

COURT OF APPEALS

MARK JOHNSON and AMY JOHNSON, Plaintiffs-Appellees, v GWHC CORPORATION, Defendant-Appellant.	UNPUBLISHED March 27, 2007 No. 273607 Iron Circuit Court LC No. 05-003341-CH

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order that granted partial summary disposition to plaintiffs and awarded them an easement by necessity across property owned by defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties own adjacent tracts of land in Iron Township. Plaintiffs' property, which lies to the south, is landlocked, while a county road runs from east to west across defendant's property to the north. Both parcels were initially owned by Keweenaw Land Association, Ltd (Keweenaw), but common ownership ended in 1896 when Keweenaw sold the property now belonging to plaintiffs. In 2005, plaintiffs filed suit, alleging that a "historical roadway" across defendant's parcel connects their property with the county road and claiming an easement by necessity over this track. The trial court partially agreed, granting summary disposition to plaintiffs on the issue of whether an easement by necessity exists. Following this order, the trial court entered a consent judgment in which the parties defined the scope and the location of the easement.

On appeal, defendant asserts that the trial court erred in determining that the Marketable Record Title Act (MRTA), MCL 565.101 *et seq*, does not bar plaintiffs' claim to an easement by necessity across its property.

The decision to grant or deny summary disposition presents a question of law that we review de novo. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Similarly, the interpretation and application of a statute constitutes a question of law subject to de novo review. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

Under MCR 2.116(C)(10), summary disposition is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A question of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*. In deciding a motion under this rule, the trial court must consider "the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of any material fact exists to warrant a trial." *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

The primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). "Each word of a statute is presumed to be used for a purpose, and, as far as possible, effect must be given to every clause and sentence." *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). If the statutory language is clear and unambiguous, the court must apply the statute as written, and judicial construction is neither necessary nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

An easement is a limited property interest consisting of a right to use the land burdened by it. *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378; 699 NW2d 272 (2005). An easement by necessity "may be implied by law where an owner of land splits his property so that one of the resulting parcels is landlocked except for access across the other parcel." *Chapdelaine v Sochocki*, 247 Mich App 167, 172; 635 NW2d 339 (2001). The analytical basis for enforcing such an easement is the assumption that the parties who originally created the landlocked parcel intended its owner to have access to the land over the other's parcel. *Tolksdorf v Griffith*, 464 Mich 1, 10; 626 NW2d 163 (2001). Thus, "with a common-law easement by necessity, all the court is really doing is enforcing the original intent of the parties." *Id.* (citations omitted). See also *Waubun Beach Ass'n v Wilson*, 274 Mich 598, 608; 265 NW 474 (1936). "In a conveyance that deprives the owner of access to his property, access rights will be implied unless the parties clearly indicate they intended a contrary result." *Chapdelaine, supra* at 173. The party seeking enforcement of the right need only establish that the easement is reasonably necessary to the enjoyment of the benefited property. *Id.*

The MRTA[1] "provides that, subject to certain exceptions regarding prior claims of interest…, any person who has an unbroken chain of title for over forty years has marketable

[1] Specifically, MCL 565.101 provides:

> Any person, having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests, shall at the end of the applicable period be considered to have a marketable record title to that interest, subject only to claims to that interest and defects of title as are not extinguished or barred by application of this act and subject also to any interests and defects as are inherent

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record title in that interest." *Fowler v Doan*, 261 Mich App 595, 599; 683 NW2d 682 (2004). A person has an unbroken chain of title where the official public records disclose a conveyance, not less than 20 years in the past for mineral interests and 40 years for other interests, that "purports to create the interest in that person, with nothing appearing of record purporting to divest that person of the purported interest." MCL 565.102. Once a person has obtained marketable title, he holds the property free and clear of

> any and all interests, claims, and charges whatsoever the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred prior to the 20-year period for mineral interests, and the 40-year period for other interests, and all interests, claims, and charges are hereby declared to be null and void and of no effect at law or in equity. [MCL 565.103.]

However, the MRTA contains numerous exceptions. Regarding easements, MCL 565.104 provides in pertinent part that the MRTA shall not be applied to bar or extinguish

> any easement or interest in the nature of an easement, or any rights appurtenant thereto granted, excepted or reserved by a recorded instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable, by reason of failure to file the notice herein required.

Here, both plaintiffs' and defendant's properties were once owned by Keweenaw and the conveyance severing the two parcels resulted in plaintiffs' property being landlocked. Because the deed of sale does not clearly indicate that the parties intended a contrary result, the instrument implicitly creates an easement for access over defendant's property. *Chapdelaine*, *supra*, 172-173. Thus, the easement by necessity was created by a recorded instrument within the meaning of MCL 565.104. And the existence of the easement is evidenced by the location of a roadway across defendant's property. By the express terms of the statute, the fact that defendant presented an affidavit from the owner of a neighboring property stating that he was unable to observe the track when passing by the property in 1966 does nothing to change this result. Consequently, even though it appears that defendant has an unbroken chain of title for more than forty years, the exception for easements created by recorded instruments listed in MCL565.104 prevents the MRTA from extinguishing plaintiffs' easement by necessity.

The trial court did not err in finding that the MRTA does not bar plaintiffs' claim for an easement by necessity across defendant's property.

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> in the provisions and limitations contained in the muniments of which the chain of record title is formed and which have been recorded within 3 years after the effective date of the amendatory act that added section 1a or during the 20-year period for mineral interests and the 40-year period for other interests.

We affirm.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens